

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, COCHIN**

Before Shri George George K, Judicial Member

ITA No.141 / Coch / 2020 : Asst.Year 2008-2009

Sri.Krishnan Ranjith 2A, Chackolas Water Scapes Pandit Karuppan Road Thevara Cochin – 682 013. PAN : ADLPR2984G.	Vs.	The Asst.Commissioner of Income-tax, Cir.2(2) Range -2 Kochi.
(Appellant)		(Respondent)

Appellant by : Sri.K.Gopi
Respondent by : Sri.B.Sajjive, Sr.AR

Date of Hearing : 11.06.2020	Date of Pronouncement : 15.06.2020
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ORDER

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 27.11.2019. The relevant assessment year is 2008-2009.

2. Two effective grounds are raised in this appeal, they are as follow:-

“2. Whether on facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in confirming the disallowance made by the Assessing Officer amounting to Rs.1,99,787 being 30% of the expenses accounted under the head subscription and membership fee on the ground that these are payments to various clubs and banks and were incurred only to maintain good relationship with clients and appears to be on a higher side.

3. Whether on facts and circumstances of the case, the Commissioner of Income Tax (Appeals) erred in confirming the estimated disallowance made by Assessing Officer being 10% of the expenditure

accounted under carriage outward, commission and discount, transportation expenses, travelling expenses, business promotion expenses and repairs and maintenance, by making an estimation of such expenses supported by self-made vouchers.”

3. The assessee is an individual engaged in the business of manufacturing and trading of diesel generator sets. For the assessment year 2008-2009, the return of income was filed on 19.09.2008 declaring total income of Rs.14,97,740. The assessment was taken up for scrutiny by issuance of notice u/s 143(2) of the I.T.Act. The scrutiny assessment u/s 143(3) of the I.T.Act was completed vide order dated 16.12.2012 by assessing the total income of Rs.22,83,230.

4. Two additions are challenged in this appeal, viz.,
- (i) Rs.1,99,787 being 30% of expenditure accounted under the head subscription and membership fees;
 - (ii) Rs.5,24,697 being 10% adhoc disallowance under various expenses debited to the profit and loss account.

Disallowance of Rs.1,99,787

5. The brief facts in relation to the above disallowance is that the assessee is engaged in the business of assembling, trading and marketing of diesel generator sets of Kirloskar. While completing the assessment, the Assessing Officer disallowed a sum of Rs.1,99,787 being 30% of the expenditure accounted under the head subscription and membership fees on the ground that the expenditure claimed appears to be on the higher side and the assessee could not produce even 50% of the bills / proof in support of the claim.

5.1 On further appeal, the CIT(A) confirmed the view taken by the Assessing Officer. The CIT(A) observed that the disallowance is correct, fair and reasonable, for the following reasons:-

- (i) Higher personal element in such type of recreational expenses cannot be ruled out;
- (ii) The expenses are on higher side;
- (iii) The assessee could not produce even 50% of evidences in support of claim of these expenses during assessment.

5.2 Aggrieved by the order of the CIT(A), the assessee has raised this issue before the Tribunal. The learned Counsel for the assessee has submitted a paper book enclosing therein the details of expenses claimed and disallowance, copies of the case laws relied on etc. The learned Counsel submitted that the Assessing Officer has made an arbitrary disallowance of 30% on certain presumptions without giving any basis / reason for the findings. It was submitted that the Assessing Officer has not pointed out any defect or deficiency in the details submitted during the course of assessment. The assessee has also placed on record the details furnished before the Assessing Officer with regard to the expenditure claimed under the head subscription and membership fees. It was further contended that the CIT(A) ought to have noted that the disallowance made by the A.O. is on the higher side.

5.3 The learned Departmental Representative strongly supported the orders of the Income-tax Authorities.

5.4 I have heard the rival submissions and perused the material on record. I have also gone through the details of the expenses claimed under the head subscription and membership fees. The said expenditure represent subscription to Reliance, VSNL and Tata Indicom service providers, subscriptions for sales and marketing software, expenditure incurred at hotels / clubs for meetings, discussions etc. The said expenditure in aggregate represents only 0.34% of the total expenditure incurred by the assessee during the relevant assessment year. As mentioned earlier, the assessee is in the business of assembling, trading and marketing of diesel generator sets of Kirloskar in Kerala. Due to the inherent nature of the business of the assessee, each contract for supply and erection of the diesel generator is obtained after considerable amount of negotiations and discussions with clients which includes builders, hotels, hospitals, business complexes, individuals etc., across the State of Kerala. Since the value of the product range is comparatively high, to convince the customers, a series of presentations, negotiations and discussions at various levels of the client would occur before the finalization of a particular order. Most of such presentations, meetings and discussions are held at various hotels, clubs. Such expenses incurred at hotels, clubs, for meeting, discussions, travelling etc. are accounted under the said head of subscriptions and membership fees, and also, travelling and other expenditures incurred for attending conferences / meetings with the dealer – Kirloskar is also accounted under the said head of expenses.

The expenditure incurred is fully supported and are incurred through by banking channels. It is to be further noted that there are no qualifications, observations made by the Auditors in their report regarding these expenses are not incurred. The Assessing Officer has made an arbitrary adhoc disallowance of 30% without giving any reasons for the findings. The A.O. has also not found out any defect / deficiency. Therefore, I am of the view that the disallowance made is on the higher side taking into the given facts and circumstances of the case. As personal element in such expenses cannot be totally ruled out, and to meet the ends of justice, I am of view that 10% of the disallowance of the said expenditure would be sufficient on facts and circumstances of the case. Hence, the assessee gets relief of Rs.1,33,192 and I confirm the disallowance of Rs.66,595. It is ordered accordingly.

5.5 Hence, ground No.2 raised in this appeal is partly allowed.

Disallowance of Rs.5,24,697

6. The relevant finding of the Assessing Officer while making the disallowance, reads as follow:-

“5. The following expenses are seen debited in the P&L A/c for which the expenses are supported by mainly internal vouchers only.

(i)	Carriage outward	Rs.11,63,484
(ii)	Commission & Discount	Rs.13,71,732
(iii)	Transportation charges	Rs.12,35,155
(iv)	Travelling expenses	Rs. 3,96,922
(v)	Business Promotion exps.	Rs. 6,98,395

(vi) Repairs & maintenance	Rs. 3,81,286

	Rs.52,46,974

6. As said earlier since the assessee kept self made vouchers mainly in respect of the above shown expenses, the genuineness of the claim could not be correctly ascertained. These facts have been reported in the notes on account furnished by assessee's auditor in their audit report also. Therefore, 10% of the above expenses of Rs.5,24,697 is disallowed and added back to the total income."

6.1 Aggrieved, the assessee is in appeal before the CIT(A). The CIT(A) observed that the disallowance being only 10% of such high amount of expenses, which is without proper bills is correct, fair and reasonable, and confirmed the view taken by the Assessing Officer.

6.2 Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal. The learned Counsel for the assessee submitted that the CIT(A) has grossly erred in confirming the adhoc disallowance at 10% of the expenditure accounted under the various miscellaneous heads, which are mainly supported by internal vouchers. It was submitted that both the Assessing Officer and the CIT(A) have grossly erred in not appreciating the correct nature of these expenses and the nature of vouchers generally available for such expenses in the industries.

6.3 The learned Departmental Representative submitted that the disallowance of 10% of expenses which are essentially

supported by self-made vouchers, is correct and no interference is called for.

6.4 I have gone through the details of the expenses aggregating to Rs.52,46,970, which are as under:-

Carriage outward	11,63,484	Expenditure on local transportation of goods purchased. The auditor has not given any adverse remark in respect of this expenditure. The observation of the AO that the auditors have also commented on this head of expenditure is wrong on facts.
Commission & Discount	13,71,732	Discount given to customers and commission paid to staff / others for procuring / canvassing orders. By the inherent nature of this expenditure which is originating from the appellant, normally such expenditure will be supported by self made vouchers only.
Transportation charges	12,35,155	Expenditure incurred on local transportation of goods sold. By the inherent nature of this expenditure which is originating from the appellant, normally such expenditure will be supported by self made vouchers only.
Travelling charges	3,96,922	Travelling expenses of sales executives. Due to the very nature, such expenditure will be largely supported by self made vouchers only.
Business promotion expenses	6,98,395	Expenditure on advertisements, approvals of various agencies and seminars, meetings etc.
Repairs and maintenance	3,81,286	Repairs and maintenance of factory building, vehicles, equipment
Total	52,46,974	

6.5 The details of the ledger account are also placed on record. The expenditures are very much in the nature of unavoidable expenditure in a small scale manufacturing unit.

The quantum of such expenditure is also very small when compared to the volume of operations of the assessee. The assessee is running a small scale manufacturing unit and this expenditure incurred are in the ordinary course of business and are mostly paid to unorganized sectors and hence in most of the cases only self made vouchers are available for incurring such expenses. None of these expenditures are of personal nature. The Assessing Officer has not brought on record any material to show that these impugned expenses are not incurred by the assessee and are not an allowable deduction. It is now well settled law that no adhoc disallowance could be made unless the A.O. brings any specific detail on record which may call for any disallowance. In this context, reliance has placed on the following judicial pronouncements:-

- (i) ACIT Kottayam v. MM Publications [(2011) 43 SOT 59 (Cochin)]
- (ii) CIT v. S.S.P. (P.) Ltd. [(2011) 14 taxmann.com 87 (P&H)]
- (iii) UEM India (P.) Ltd. v. Addl.CIT [(2015) 53 taxmann.com 387 (Delhi Trib.)]
- (iv) Pr.CIT v. R.G.Buildwell Engineers Ltd. [(2018) 99 taxmann.com 284 (SC)]
- (v) R.G.Buildwell Engineers Ltd. 99 Taxmann.com 283 ITR (Delhi High Court)
- (vi) TUV India Pvt. Ltd. v. DCIT [(2019) 110 taxmann.com 175 (Mumbai Trib.)]

6.6 In the light of the aforesaid reasoning, I hold that the disallowance of 10% in the facts and circumstances of the case is uncalled for and I delete the same. It is ordered accordingly.

6.7 Hence, ground No.3 raised in this appeal is allowed.

7. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced on this 15th day of June, 2020.

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin, dated 15th June, 2020
Devadas G*

Copy to :

1. The Appellant
2. The Respondent
3. The CIT(A), Thrissur.
4. The Pr.CIT, Thrissur.
5. The DR, ITAT, Kochi
6. Guard File.

Asst.Registrar/ITAT/Kochi